

NOTICE OF PROPOSED AMENDMENT OF REGULATION AND STATEMENT OF REASONS

California Code of Regulations Title 2, Administration Division 1, Administrative Personnel

DATE: March 12, 2002

TO: ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS, AND
MEMBERS OF THE GOVERNOR'S CABINET

SUBJECT: Proposed Amendment to SPB Rule 52.4 – Expedited Hearings

AUTHORITY:

Under authority established in Section 18701 of the Government Code, the State Personnel Board (SPB) has proposed to amend Section 52.4 of Title 2 of the California Code of Regulations (CCR).

REFERENCE:

This regulation is being amended to implement, interpret, and/or make specific Government Code Sections 18670, 18703, 19253.5, 19575, 19585 and 19590.

PUBLIC HEARING:

Date and Time: May 7, 2002 from 1:00 to 1:30 p.m.

Place: Auditorium
801 Capitol Mall, Room 150
Sacramento, California

Purpose: To receive oral public comments about this action.

WRITTEN PUBLIC COMMENT PERIOD:

The public comment period for written public comments will close May 6, 2002, at 5:00 p.m. This is to allow time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for their consideration at the time of the hearing. Any person may submit written comments about the proposed amendment. To be considered by the Board, written comments must be received to the attention of Bruce Monfross at the State Personnel Board, 801 Capitol Mall, MS 53, Sacramento, CA 95814, before the close of the written comment period. During the 45-day written comment period, written comments may also be e-mailed to Bruce Monfross at bmonfross@spb.ca.gov or faxed to (916) 653-4256.

AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which the proposal is based are available upon request directed

to the SPB's contact person. The rulemaking file is available for review during normal business hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Please contact Bruce Monfross at (916) 653-1403 or TDD (916) 653-1498 for additional information regarding this action. The backup agency contact for this action is Steve Unger at the State Personnel Board, P.O. Box 944201, Sacramento, CA 94244-2010, (916) 651-8461 or TDD (916) 653-1498. Questions regarding the substance of this regulation should be directed to the contact person. Questions regarding the regulatory process in conjunction with this regulation should be directed to the backup contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulation available for at least 15 days before the date the regulation is permanently amended.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code Section 18701 authorizes SPB to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (Government Code, Sections 18500 et seq.).

Government Code Section 18670 authorizes SPB to hold hearings concerning all matters relating to the enforcement and effect of the Civil Service Act.

Government Code Section 18703 authorizes SPB to provide processes for dismissals, demotions, suspensions, and other adverse action for or in the state civil service in accordance with Article VII of the Constitution of the State of California and the Civil Service Act.

Government Code Section 19253.5 authorizes state employees who have been non-punitively dismissed from state service for medical reasons to file an appeal with SPB challenging the dismissal.

Government Code Section 19575 authorizes state employees who have been punitively dismissed from state service for disciplinary reasons to file an answer with SPB appealing the dismissal.

Government Code Section 19585 authorizes state employees who have been non-punitively dismissed from state service for failure to meet requirements for continuing employment to file an appeal with SPB challenging the dismissal.

Government Code Section 19590 authorizes state managerial employees who have been punitively dismissed from state service for disciplinary reasons to file an appeal with SPB challenging the dismissal.

Existing California Code of Regulations, Title 2, Section 52.4, permits a party, who has appealed to the SPB from a dismissal, with the concurrence of the other party, to obtain an expedited hearing and decision. The proposed amendment would modify the existing rule to permit an appellant, who has appealed to SPB from a dismissal, to request an expedited evidentiary hearing before a SPB administrative law judge (ALJ) on the grounds that he or she would be irreparably harmed if the hearing is not expedited and has a significant likelihood of prevailing on the merits. The ALJ may grant the request if either the department concurs or the ALJ finds both that the appellant would be irreparably harmed if the appeal is not expedited and that the appellant has a significant likelihood of prevailing on the merits. If the ALJ grants the request, the ALJ may impose such orders for expedited discovery as the ALJ may deem necessary or appropriate.

IMPACT ON SMALL BUSINESSES

No impact on small businesses is anticipated from the implementation of the proposed amendment, since Section 52.4 as it exists or as it would be amended applies only to state agencies. The proposed amendment would affect only state agencies and state employees.

LOCAL MANDATE:

SPB has determined that the proposed action has no mandate upon local agencies or school districts and therefore requires no reimbursement pursuant to Section 17561 of the Government Code.

COST ESTIMATES OF PROPOSED ACTION:

Costs or Savings to State Agencies:

The proposed action has been created in order to modify the procedures whereby a state employee who has been dismissed from his or her position can request an expedited hearing concerning his or her dismissal. It is anticipated that any additional costs that the proposed amendment may cause for state agencies will be insignificant.

Impact on Housing Costs:

The proposal will not affect housing costs.

Costs of Savings in Federal Funding to the State:

No impact.

Other Nondiscretionary Costs or Savings Imposed on Local Agencies:

The proposal does not impose nondiscretionary costs or savings on local agencies.

Cost Impact on Representative Private Persons or Businesses:

SPB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT REGARDING THE EFFECT ON JOBS OR BUSINESSES:

The proposed amendment will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

DETERMINATION:

SPB must determine that no alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

SPB invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

FINAL STATEMENT OF REASONS:

Upon its completion, copies of the Final Statement of Reasons may be obtained from the contact person or the backup contact person.

ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE STATE PERSONNEL BOARD WEB SITE:

The text of the proposed regulation amendment in underline and strikeout, as well as the Notice of Proposed Amendment of Regulation and Statement of Reasons, will be on the State Personnel Board Web site at: www.spb.ca.gov.

STATEMENT OF REASONS

Existing California Code of Regulations, Title 2, Section 52.4 permits a party, who has appealed to the SPB from a dismissal, with the concurrence of the other party, to obtain an expedited hearing and decision. The proposed amendment would modify the existing rule to permit an appellant, who has appealed to SPB from a dismissal, to request an expedited evidentiary hearing before a SPB administrative law judge (ALJ) on the grounds that he or she would be irreparably harmed if the hearing is not

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expedited and has a significant likelihood of prevailing on the merits. The ALJ may grant the request if either the department concurs or the ALJ finds both that the appellant would be irreparably harmed if the appeal is not expedited and that the appellant has a significant likelihood of prevailing on the merits. If the ALJ grants the request, the ALJ may impose such orders for expedited discovery as the ALJ may deem necessary or appropriate.

It is anticipated that this amended process, which eliminates the strict requirement that the non-moving party stipulate to an expedited hearing before such hearing can be conducted, will help ensure that dismissed employees who might otherwise be irreparably harmed if their dismissal is not adjudicated in as expeditious a manner as possible, will have better recourse to such a process.

Mike Willihnganz
Chief, Policy Division

Attachment: Text of Proposed Regulation Amendment

Regulation Governing Expedited Hearings

For this amendment, text added to the regulation is indicated by underline and text deleted from the regulation is indicated by strikethrough.

Title 2. ADMINISTRATION

Division 1. Administrative Personnel

Chapter 1. State Personnel Board

§ 52.4. Expedited Hearings.

~~Within ten days of an appeal being filed, either party may request that the consideration of an appeal from dismissal be expedited. If the other party concurs~~ Within ten days after filing an appeal from a dismissal, an appellant may file with the board and serve upon the respondent a written request that the hearing on the appeal be expedited on the grounds that the appellant would be irreparably harmed if the hearing is not expedited and has a significant likelihood of prevailing on the merits. Appellant's request shall include documentary evidence and/or sworn declarations in support of the appellant's position. Within seven days after service of appellant's request, respondent shall file its written response to that request and serve that response upon the appellant. Appellant's request may be granted if either the respondent concurs in the request or the administrative law judge determines both that the appellant would be irreparably harmed if the appeal is not expedited and that the appellant has a significant likelihood of prevailing on the merits. The administrative law judge may impose such orders for expedited discovery as the administrative law judge may deem necessary or appropriate. If appellant's request is granted, the matter will be set for hearing within 15 days. The administrative law judge shall prepare the proposed decision within five working days of the hearing for submittal to the board at its next meeting.

NOTE: Authority cited: Section 18701, Government Code.

Reference: Sections, 18670, 18703, 19253.5, 19575, 19585 and 19590, Government Code.